

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MASON GRIFFIN, individually, and,)
 AMY GRIFFIN, as legal guardian and)
 trustee of CARSON GRIFFIN, a) Case No. _____
 minor child,)
)
) (Removed from the Superior Court of
) Gwinnett County, State of Georgia,
 Plaintiffs,) Case No. 23-A-00168-3)
 v.)
)
)
 WESCO DISTRIBUTION, INC, and,)
 KELLY GAGNON, Individually,)
)
)
 Defendants.)

DEFENDANT WESCO DISTRIBUTION, INC'S
NOTICE OF REMOVAL

Defendant Wesco Distribution, Inc. (“Wesco”), pursuant to 28 U.S.C. § 1441(a) & 1446, files this Notice of Removal of the civil action filed against it by Plaintiffs Mason Griffin and Amy Griffin, as legal guardian and trustee of Carson Griffin (“Plaintiff” or “Griffin”) from the Superior Court of Gwinnett County, Case No. 23-A-00168-3, to the United States District Court for the Northern District of Georgia. In support hereof, Wesco respectfully states as follows:

1. Wesco is a Defendant in the above-captioned civil action filed in the Superior Court of Gwinnett County, which is within the District and Division of this Court. See 28 U.S.C. § 90(a)(2).

2. This action was commenced against Wesco on the 9th day of January, 2023 as reflected on the Complaint for the state-court action at the Superior Court of Gwinnett County, and service of process of the Complaint and Notice to Produce was completed on Wesco on January 18, 2023. See Exhibit 1. This Notice is being filed within 30 days after Wesco first received, through service or otherwise (per 28 U.S.C. §1446(b)), the Complaint.

3. A copy of the Complaint is attached hereto as Exhibit 2. No other process, pleadings or Orders have been served upon Wesco in this action.

4. As set forth in the Complaint, Plaintiffs seek amounts that previously were held in an account for Joshua Griffin in the Wesco Distribution, Inc. Retirement Savings Plan. That Plan is a qualified defined contribution plan subject to U.S.C. § 401(k) and to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1001, et. seq. See Declaration of Tina Mayes (attached as Exhibit 3), ¶ 4 & Exh. A (Copy of Plan Summary Plan Description).

5. The Plan beneficiary designation on file for Mr. Griffin at his death was Kelly Gagnon. Id. at ¶ 9.

6. A distribution from Mr. Griffin's account within the Plan to Ms. Gagnon's account. Id. at ¶ 9.

7. Ms. Gagnon's account is a beneficiary account held within the Plan. Id. at ¶ 9.

8. The assets of the Plan include the amount in Ms. Gagnon's account. Id. at ¶ 10.

9. The Plan has contracted with FMR, LLC ("Fidelity") to administer the 401(k) Plan. Id. at ¶ 7.

10. Using the platform to administer the Plan provided by Fidelity, Wesco employees supporting the Plan's operation can see the balance in Ms. Gagnon's account. Id. at ¶ 12. If her money was outside the Plan, they would not be able to do this. Id.

11. Ms. Gagnon's account was valued at \$97,460.60 as of February 13, 2023. Id. at ¶ 13.

12. While the Complaint on its face seeks to assert claims relating to this ERISA benefit under state law, specifically at least Counts I and II (if not all three counts) are claims for retirement benefits or relating to the administration of those

benefits that are completely preempted and governed by Sections 514 and 502 of ERISA respectively (29 U.S.C. §§ 1144 and 1132(a)). As such, this action is of a civil nature of which the District Courts of the United States have original federal jurisdiction under 28 U.S.C. § 1331, and can be removed to this Court under authority of Aetna Health Inc. v. Davila, 542 U.S. 200, 210 (2004); Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 62-63 (1987), Garcon v. United Mut. Of Omaha Ins. Co., 779 Fed. App'x 595, 597-98 (11th Cir. 2019); Conn. State Dental Ass'n v. Anthem Health Plans, 591 F.3d 1337, 1345 (11th Cir. 2009) and similar authorities, because any such state-law claim is completely preempted by ERISA.

13. Moreover, this Court has diversity-removal federal subject-matter jurisdiction as well. Plaintiffs admit they are residents of Florida. Exhibit 2 ¶1. Plaintiffs admit Defendant Gagnon is a resident of South Carolina. Id. ¶3. Finally, Defendant Wesco is a Delaware corporation with a principal place of business in Pennsylvania. <https://investors.wesco.com/node/16581/html> And it is undisputed that the amount in controversy exceeds \$95,000.00 even before Plaintiffs' claims for attorney's fees and costs. Exhibit 2 ¶¶33-35 and supra ¶ 11. Thus, removal is also proper under 28 U.S.C. §1441(b).

14. Wesco, through counsel, has received the consent of Kelly Gagnon to the removal of this action, a copy of which is attached as Exhibit 4.

15. If any of the assertions in this Notice are controverted, Wesco reserves the right to respond with additional evidence and argument. See 28 U.S.C. § 1447.

WHEREFORE, Wesco respectfully requests that this action be duly removed to this Court, and that it proceed herein.

Respectfully submitted this 17th day of February, 2023.

/s/ J. Timothy McDonald

J. Timothy McDonald

Georgia Bar No. 489420

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Attorney for Defendant

Wesco Distribution, Inc.

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), counsel hereby certifies that this document has been prepared using Times New Roman 14 point font, as approved by Local Rule 5.1(C).

This 17th day of February, 2023.

/s/ J. Timothy McDonald

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Wesco Distribution, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF filing system, which will automatically send email notification of such filing to all counsel and parties of record as follows:

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This 17th day of February, 2023.

/s/ J. Timothy McDonald
J. Timothy McDonald
Georgia Bar No. 489420

*Attorney for Defendant
Wesco Distribution, Inc.*